

REMARKS

I. Introduction

By the present Amendment, claims 1-5 and 7-11 have been amended. Claim 13 is newly presented for consideration. Accordingly, claims 1-5 and 7-13 are now pending in the application. Claims 1 and 11 are independent.

II. Office Action Summary

In the Office Action of February 1, 2010, claim 1 was rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claims 1 and 9 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application 2006/0052702 to Matsumura et al ("Matsumura"). Claims 2-5, 7, 8, and 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Matsumura in view of U.S. Patent 7,455,640 issued to Suzuki et al ("Suzuki"). These rejections are respectfully traversed.

III. Rejections under 35 USC §112

Claim 1 was rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Regarding this rejection, the Office Action indicates that the limitation recited in the "wherein" clause of the claim was unclear as to what physical quantity or color region was being claimed.

By the present Amendment, Applicants have amended independent claim 1, in part, to remove this limitation. Accordingly, this particular ground of rejection has been rendered moot.

IV. Rejections under 35 USC §102

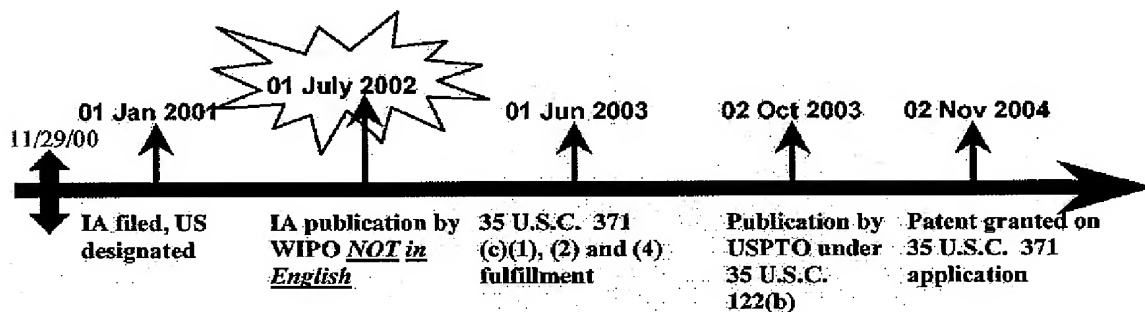
Claims 1 and 9 were rejected under 35 U.S.C. §102(e) as being anticipated by Matsumura. Regarding this rejection, the Office Action indicates that Matsumura discloses an ultrasonic imaging apparatus that includes an ultrasonic probe, an ultrasound imaging structure that generates an ultrasound image based on reflected echoes received by the ultrasonic probe, an elastic image structure that obtains a physical quantity of the elasticity of the object, and a display that overlays the ultrasound image to the color elastic image or arranges the ultrasound image and the color elastic image. An input is allegedly provided for variably setting a corresponding relationship between the hue of the color elastic image and a level of the physical quantity. The Office Action further indicates that the color elastic image is generated in accordance with a set of physical quantities of the elasticity and a set of hue set by the input means so that at least one of the regions having a larger or smaller physical quantity of elasticity than the set physical quantity is displayed with the set hue. Applicants respectfully disagree.

Applicants again reiterate the fact that Matsumura is improperly applied to reject the claims in that this reference does not qualify as prior art under 35 USC §102(e). Matsumura is an international application filed after November 29, 2000 and has a PCT publication date of May 13, 2004. However, the PCT publication was not in English, and a U.S. publication date of March 9, 2006. According to the MPEP:

(2) If the international application was filed on or after November 29, 2000, but did not designate the United States or was not published in English under PCT Article 21(2), do not treat the international filing date as a U.S. filing date for prior art purposes. In this situation, do not apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any

earlier filing date to which such an international application claims benefit or priority. (Emphasis added)

The MPEP goes on to provide various examples of situations for determining the date of a reference for purposes of 35 USC §102(e). Specifically, example 5 from the MPEP is reproduced below for an international application which was not published in English:



The MPEP indicates this reference has no date under 35 USC §102(e). Consequently, Matsumura does not qualify as a reference under 35 USC §102(e), and cannot be used to reject the claimed invention. Although not applied under 35 USC §102(e), Applicants further note that Suzuki falls under the same category as Matsumura as being published in a non-English language.

It is therefore respectfully submitted that claims 1 and 9 are allowable over the art of record.

V. Rejections under 35 USC §103

Claims 2-5, 7, 8, and 10-12 were rejected under 35 USC §103(a) as being unpatentable over Matsumura in view of Suzuki. Regarding this rejection, the Office Action principally relies on Matsumura for disclosing all of the features recited in independent claim 1. Suzuki is relied upon for disclosing the remaining features that are recited in the claims.

As previously discussed, however, Matsumura is improperly applied to reject the claims under 35 USC §102(e). Applicants further note, however, that the publication date of Suzuki is after the U.S. filing date of the present application. Consequently, these references cannot be combined to reject the claimed invention.

It is therefore respectfully submitted that claims 2-5, 7, 8, and 10-13 are allowable over the art of record.

VI. Conclusion


For the reasons stated above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a Notice of Allowance is believed in order, and courteously solicited.

If the Examiner believes that there are any matters which can be resolved by way of either a personal or telephone interview, the Examiner is invited to contact Applicants' undersigned attorney at the number indicated below.

AUTHORIZATION

Applicants request any shortage or excess in fees in connection with the filing of this paper, including extension of time fees, and for which no other form of payment is offered, be charged or credited to Deposit Account No. 01-2135 (Case: 389.46211X00).

Respectfully submitted,
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Dated: May 3, 2010